

REQUEST FOR PROPOSAL



THE STATE BAR OF CALIFORNIA

This document is a Request for Proposal ("RFP") for services of two computer programmer/analysts.

Please e-mail your proposal no later than 5 p.m. on July 8, 2004 to:

Cathy.Hamilton@calbar.ca.gov

I. INTRODUCTION

The State Bar of California ("the State Bar"), created in 1927 by the Legislature and adopted into the California Constitution, is a public corporation within the judicial branch of state government. In accordance with statute and the State Bar's procurement policies, contracts of \$50,000 or more are subject to formal competitive bidding. As a governmental agency, the State Bar regularly is granted favorable governmental pricing and contract terms.

The State Bar is seeking proposals for computer programmer/analysts to maintain and develop legacy applications residing on RISC-based IBM AS/400s.

A proposal shall constitute an irrevocable offer for 60 business days following the deadline for its submission. Reference to a certain number of days in this RFP shall mean business days unless otherwise specified.

Contact with State Bar personnel in connection with this RFP may not be made other than as specified in this RFP. Unauthorized contact of any State Bar personnel may be cause for rejection of a bid.

II. GENERAL INFORMATION

A. Submission Requirements

To be considered responsive, a proposal must contain all of the following:

1. A brief description of the history and organization of the proposer's firm, if any, and of any proposed subcontractor.

2. Copies of business licenses, professional certifications or other credentials, together with evidence that proposer, if a corporation, is in good standing and qualified to conduct business in California.
3. If the proposer is a firm, the most recent annual reports, or comparable document, including detailed current profit and loss, assets and liabilities, and other relevant financial data.
4. References from at least three clients for whom items comparable or substantially similar to those described in "Statement of Work" below have been produced within the most recent three years. The references must include samples of work that demonstrates your ability to produce those items; identify those responsible for producing them; and indicate whether they were produced on time and within budget. The State Bar will contact references only if you are a finalist in the evaluation process and only after notifying you.
5. Qualifications, background and experience of those proposed to work on the project.
6. A general description of the techniques, approaches and methods to be used in completing the project.
7. A concise summary of the best evidence that you are able to provide the services called for in "Statement of Work" below.
8. A detailed cost proposal, including any travel costs and other expenses. As the State Bar may award a contract based on the initial offer, a proposer should make its initial offer on the most favorable terms available. The State Bar reserves the right, however, to have discussions with those proposers falling within a competitive range, and to request revised pricing offers from them and to make an award or conduct negotiations thereafter.

B. Rejection of Proposals

The State Bar reserves the right in its sole discretion to reject any or all proposals in whole or in part, without incurring any cost or liability whatsoever. All proposals will be reviewed for completeness of the submission requirements. If a proposal fails to meet a material requirement of the RFP, or if it is incomplete or contains irregularities, the proposal may be rejected. A deviation is material to the extent that a proposal is not in substantial accord with RFP requirements.

Immaterial deviations may cause a bid to be rejected. The State Bar may or may not waive an immaterial deviation or defect in a proposal. The State Bar's waiver of an immaterial deviation or defect shall in no way modify the RFP or excuse a proposer from full compliance with the RFP requirements.

Any proposal may be rejected where it is determined to be not really competitive, or where the cost is not reasonable.

Proposals that contain false or misleading statements may be rejected if in the State Bar's opinion the information was intended to mislead the State Bar regarding a requirement of the RFP.

C. Evaluation Process and Highest Scored Proposer

An evaluation team will review in detail all proposals that are received to determine the Highest Scored Proposer ("HSP").

The State Bar reserves the right to determine the suitability of proposals on the basis of a proposal's meeting administrative requirements, technical requirements, the review team's assessment of the quality and performance of the equipment and services proposed, and cost.

During the evaluation process, the State Bar may require a proposer's representative to answer questions with regard to the proposal and/or require certain proposers to make a formal presentation to the evaluation team and/or the State Bar Senior Executive Team. The State Bar may also have discussions with those proposers falling within a competitive range, and request revised pricing offers from such proposers and make an award and/or conduct negotiations thereafter.

The following criteria will be used in reviewing and comparing the proposals and in determining the HSP. The weight to be assigned to each criterion appears following each item.

1. The accuracy and completeness of the proposal's response to each specific requirement of the RFP, including the extent to which the proposal affirmatively accepts the State Bar's contracting requirements (10 %).
2. The extent to which the proposal design will serve the purpose and meet the needs of the State Bar as expressed in the RFP (25%).
3. The technical ability, capacity, and flexibility of the proposer to perform the contract in a timely manner and on budget, as verified by, e.g., the quality of any demonstration, client references, demonstrated success in projects with similar requirements and any other contracts with the State Bar (25%).
4. The financial viability of the proposer as evidenced by standard financial reports and by related factors such as its business plan, market position, and strategic partnerships (10 %).

5. The total cost of the proposal solution. Costs will be evaluated only if a proposal is determined to be otherwise qualified. Costs should be itemized by type to allow the State Bar to implement the solution over the term of the contract (30%).

D. Award and Execution of Contract

Subject to the State Bar's right to reject any or all proposals, the HSP will be awarded the contract. Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA and written notice sent to proposers on or about July 15, 2004 of the Bar's intention to award the contract to the HSP. It is anticipated that final selection of the HSP will be made by July 22, 2004. The evaluation team will select a winning proposal subject to approvals granted by the Board of Governors. Upon selection, the State Bar and the selected Vendor will enter into good faith negotiations on a contract containing, without limitation, the Statement of Work and Contracting Requirements sections below.

No contract or agreement, express or implied, shall exist or be binding on the State Bar before the execution of a written contract by both parties. If agreement on the terms of such a contract cannot be reached after a period deemed reasonable by the State Bar in its sole discretion, the State Bar may enter into negotiations and sign a contract with any other proposer who submitted timely, responsive and responsible proposals to this RFP.

If, after the State Bar and the HSP agree to terms and execute a contract, that contract is terminated for any reason, the State Bar may, in its sole discretion, either enter into negotiations with the next highest scored proposer, or issue a new RFP and begin the proposal process anew.

Questions regarding the State Bar's award of any business on the basis of proposals submitted in response to the RFP, or on any other matter in connection with the selection process, should be addressed in writing to Cathy Hamilton at the State Bar of California, 180 Howard Street, San Francisco, CA 94105; E-mail, Cathy.Hamilton@calbar.ca.gov; fax, 415-538-2592.

Where written notice is required in this RFP, the notice must be sent by U.S. mail **and** either facsimile or e-mail.

E. Errors in the RFP

If a proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the proposer should immediately provide the State Bar with written notice of the problem and request that the RFP be clarified or modified. Without disclosing the source of the request, the State Bar may modify the document prior to the date fixed for submission of proposals by issuing an addendum to all potential proposers to whom the RFP was sent.

If prior to the date fixed for submissions, a proposer knows of or should have known of

an error in the RFP but fails to notify the State Bar of the error, the proposer shall bid at its own risk, and if, awarded the contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.

F. Questions Regarding the RFP

Questions, including technical questions, regarding the RFP may be addressed in writing to Cathy Hamilton (contact information above).

Questions and answers regarding the RFP may be shared with all proposers.

If a question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the proposer may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, the proposer must submit a statement explaining why the question is sensitive. If the State Bar concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence, except as required by law. If the State Bar does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and the proposer will be notified.

A proposer who believes that one or more of the RFP's requirements is onerous or unfair, or unnecessarily precludes less costly or alternative solutions, may submit a written request that the RFP be changed. The request must set forth the recommended change and reason for proposing the change. The State Bar will consider any such request received on or before July 8, 2004 at 5 p.m.

G. Addenda

The State Bar may modify the RFP prior to the date fixed for submission by mailing, e-mailing or faxing an addendum to the proposers to whom the RFP was sent. If any proposer determines that an addendum unnecessarily restricts its ability to bid, it must notify the State Bar in writing no later than three (3) days following the receipt of the addendum.

H. Withdrawal and Resubmission/Modification of Proposals

A proposal may be withdrawn at any time prior to the deadline for submitting proposals by notifying the State Bar in writing of its withdrawal. The notice must be signed by the proposer. The proposer may thereafter submit a new or modified proposal, provided that it is received at the State Bar no later than the deadline.

Modification offered in any other manner, oral or written, will not be considered. Proposals cannot be changed after the evaluation process begins

I. Protest Procedure

A proposer may protest the award if it meets all the following conditions:

1. The proposer has submitted a proposal that it believes is or should have been the HSP, under the criteria set forth above;
2. The proposer believes that its proposal meets the State Bar's administrative and technical requirements, proposes services of proven quality and performance, and offers a competitive cost to the State Bar; and
3. The proposer believes that the State Bar has incorrectly selected another proposer.

A proposer qualified to protest should contact Bill Brauer at the State Bar of California, 415-538-2543, e-mail Bill.Brauer@calbar.ca.gov, to attempt an informal resolution. If the proposer is unable to resolve the protest to the proposer's satisfaction, the proposer must file a written protest within 5 days of the notice of intention to award contract. The written protest must state the facts surrounding the issue and the reasons the proposer believes the award to be invalid. The protest must be sent by certified or registered mail or delivered personally to:

The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Attention: Chief Financial Officer

Protests will be reviewed and decided by the State Bar's Award Protest Team within 30 days after the State Bar issues written acknowledgment of the protest. In the event that a protest is filed, the contract award will be postponed pending resolution of the protest.

J. News Releases

News releases pertaining to the award of a contract may not be made without the prior written approval of the State Bar.

K. Disposition of Materials

All materials submitted in response to an RFP will become the property of the State Bar of California and will be returned only at the State Bar's option and at the expense of the proposer. One copy of each proposal will be retained for official files and become a public record. Specific limited pages of a proposal, not including proposed cost and compensation may be marked as proprietary and confidential. The proposer's consent will be requested before release of such pages to non-State Bar personnel. By submitting a proposal, a proposer agrees to these terms and waives any right to pursue a

cause of action for damages incurred as a result of the release of any information contained in a proposal.

L. Consulting Contracts – Prohibition on Follow-On Contracts

No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

III. STATEMENT OF WORK

The State Bar requires programmers/analysts to assist with the maintenance and development of legacy applications that reside on RISC-based IBM AS/400s at its San Francisco and Los Angeles sites. The AS/400s are at operating system level V4R5, and all programs are written in RPG III, IV, and a visual RPG language, AVR. One of these legacy applications is a client-server court case management system written in AVR4, a Visual Basic type of language that has routines to access the AS400 DB2/400 database¹. PCs communicate with the AS/400s via Client Access or DataGate and must be available for productive use at least 40 hours per week. PC operating systems are Windows XP and Windows 2000, and server software is Windows 2000.

The State Bar is seeking contract programmers to provide the following services:

1. Complete the State Bar Court's case management system in AVR4. The court case management system is integrated with the prosecutor's case management system. Charges are filed with the court, heard by a judge, and if appealed heard by a review judge. Phase One automated the review process and is in production. Phase Two will require the completion of the design and programming of the hearing process. This work may take as much as 9-12 months.
2. Produce member bills in RPG. Members are annually billed a mandatory fee set by the California legislature. The annual cycle includes the production of first and second fee statements, attachment of penalties for non-payment, and eventual suspension from the practice of law. Each step requires the production of a file sent to an offsite printer for processing.
3. Assist with miscellaneous maintenance tasks. There are several other cyclical processes that need AS/400 support. Members must comply with minimum continuing legal education, legal services trust fund requirements, and legal specialization rules. Additionally, bug fixes and minor programming requests need to be accomplished.

¹ Information on AVR and ASNA is available at <http://www.asna.com/>.

The State Bar estimates that completion of the work will require the equivalent of two full-time employees. Before beginning the above-described services, the proposer will be required to become familiar with the State Bar's business processes, existing systems, and programming conventions. Our experience suggests that four to eight weeks may be required for such familiarization. That time should be taken into account in the cost element of the proposal.

IV. CONTRACTING REQUIREMENTS

Upon selection of a vendor, the terms set forth in this RFP are to be embodied in a definitive agreement containing such additional covenants and other provisions as may be mutually acceptable. If appropriate, the State Bar's first choice is to incorporate the master purchasing terms and conditions applicable to the State of California to the State Bar's agreement with the Vendor.

The State Bar contemplates that, in addition to the terms described above in this RFP, final agreement between the State Bar and the selected vendor will include, without limitation, the following terms. Submission of a proposal shall constitute agreement to contract on these terms, except for any term specifically reserved in the proposal for future negotiation.

A. Term

This Agreement will commence upon the last date of signature, and will continue in full force and effect for one year thereafter, unless terminated sooner in accordance with provisions of the Agreement.

B. Time of Essence

Time is of the essence with respect to Vendor's performance of the services and equipment to be provided in the final agreement.

C. Warranties and Representations

Vendor warrants and represents that it possesses such expertise, experience and resources to perform the scope of services required in a diligent, timely and professional manner consistent with the standards of the industry. Vendor will supply at all times an adequate number of well-qualified personnel to perform the work. Vendor will provide a contact person available and authorized to remedy any non-conformity with this warranty.

Vendor warrants that its solution shall conform to and be reasonably free of error and/or defects in material and workmanship, and fit for the purpose for which it is to be used. Vendor will, at its sole cost and expense, promptly perform any and all corrections of error that occur as a result of its own, its contractors' or subcontractors' negligence.

Vendor represents and warrants that the solution will not infringe any copyright or other proprietary right (including trade secrets) of any third party, and that Vendor has full

authority to grant all rights to the State Bar hereunder.

Vendor represents and warrants that no claim, whether embodied in an action past or present, of infringement of any patent, copyright, trademark, or other intellectual property right, has been made or is pending against vendor or any entity from which Vendor has obtained such rights relative to the proposal presented to the State Bar hereunder.

D. Independent Contractor Status

It is the express intention of the parties that Vendor is an independent contractor and not an employee, agent, joint venturer, or partner of the State Bar. Nothing in this Agreement may be interpreted or construed as creating or establishing the relationship of employer and employee between the State Bar and Vendor, or any assistant, employee, or agent of Vendor. As a result, the State Bar will not withhold any amount for tax or other withholdings from any sums due Vendor under the Agreement. Vendor retains the right to perform services for others during the term of the Agreement.

E. Equipment, Tools, Supplies

Vendor will supply all equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services and insurance required. Vendor is not required to purchase, rent or hire any equipment, tools, supplies, offices, transportation, personnel, insurance or instrumentalities from the State Bar. The State Bar has no obligation whatsoever to provide any equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services or insurance required to perform services under this agreement.

F. Personnel

Vendor agrees to provide the specific employees listed in its RFP response to complete the projects listed. Vendor may only replace the specific employees with the written approval of the State Bar, which the State Bar may grant or deny in its sole discretion. Vendor will immediately replace any employee on the project with five (5) days of State Bar's request. Vendor will provide as many additional programmers as may be needed to perform the services. Vendor's employees will be available to work approximately forty (40) hours per week.

G. Indemnity Obligations of Vendor

1. To the fullest extent permitted by law, Vendor agrees to protect, indemnify, defend and hold the State Bar and the State Bar's Board of Governors, officers, employees, agents and representatives and each of their successors and assigns (the "Indemnitees") entirely harmless from and against any and all claims, actions, demands, proceedings, liabilities, damages, judgments, fines, penalties, settlements, costs and charges, including, without limitation, attorneys' fees and expenses, arising directly or indirectly

from or in connection with (a) any breach of the Agreement, (b) any actual or alleged negligent act, negligent error or omission, intentional misconduct of, or violation of any law by Vendor, Vendor's employees, subcontractors, agents, representatives or assigns (collectively, "Vendor's Agents") in the performance or non-performance of the professional services required to be performed by Vendor under the Agreement; or (c) the State Bar's enforcement of its rights under this indemnity provision. Vendor agrees that its obligations under this indemnity will survive the expiration and termination of this agreement.

2. Vendor and the State Bar enter into this Agreement with the knowledge and intent that all persons retained by Vendor to perform services for the State Bar pursuant to this Agreement will be employees of Vendor and that Vendor has the sole responsibility for the payment of all taxes lawfully due in connection with the compensation received by Vendor's employees pursuant to this Agreement. However, in the event that Vendor fails to fulfill its responsibility to pay all taxes lawfully due or in the event that any taxing authority determines that the State Bar is responsible for taxes due in connection with compensation paid by the State Bar to Vendor, Vendor agrees to defend, indemnify, and hold harmless the Indemnitees from and against any and all liability, losses, or damages, or any expense or costs whatsoever to the State Bar, including but not limited to reasonable attorneys' fees and costs incurred by the State Bar as a result of any claim, cost, or judgment against the State Bar that arise from Vendor's failure to withhold and/or pay taxes with respect to compensation received from the State Bar under this Agreement.

3. Vendor will defend, indemnify and hold harmless State Bar (its Board of Governors, officers, agents, and employees, as the same may be constituted now and from time to time hereafter) from and against any and all liability, losses or damages or any expenses or costs whatsoever to the State Bar, including reasonable attorneys' fees and costs, as a result of any claims, demands, damages, costs or judgments against the State Bar based on allegations that, as a consequence of the services rendered hereunder, any program or software designed, developed, amended, merged or restructured, or any part thereof, alone or in combination with other programs or software, infringes on any patent or copyright or misappropriates a trade secret. If any such program or software or any part thereof, is held to constitute an infringement or misappropriation, and use of the program or software is enjoined, Vendor will, at its own expense, either: (1) procure for the State Bar the right to continue to use the program or software or part thereof; (2) replace the program or software with a non-infringing replacement, provided that such replacement does not compromise performance and otherwise meets the State Bar's specifications; or (3) modify the program or software to make it non-infringing, provided that such modification does not compromise performance and otherwise meets the State Bar's specifications.

4. In the event both the State Bar and Vendor are named as defendants in the same civil action, and the State Bar determines that a conflict of interest exists between the parties, Vendor agrees to provide, at its own cost, independent counsel for the State Bar. The State Bar may, at its option, designate its Office of General Counsel as equal

participating counsel in any litigation wherein Vendor defends the State Bar.

H. Insurance Obligations of Vendor

Vendor will provide and keep in full force and effect during the term of this agreement, at Vendor's own cost and expense, the following insurance policies for the joint benefit of the Vendor and the State Bar, with an insurer reasonably acceptable to the State Bar:

1. Commercial general liability insurance with a general aggregate limit (other than products/completed operations) of at least Two Million Dollars (\$2,000,000.00); at least One Million Dollars (\$1,000,000.00) personal and advertising injury limit; at least One Million Dollars (\$1,000,000.00) premises and operations limit; at least One Million Dollars (\$1,000,000.00) each occurrence limit;
2. Workers' compensation coverage as required by law, together with employer liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence.
3. Comprehensive automobile liability insurance covering owned, leased, hired and non-owned vehicles with at least One Million Dollars (\$1,000,000.00) combined single limit.
4. Professional liability insurance with a general aggregate limit of Two Million Dollars (\$2,000,000) and an occurrence limit of Two Million Dollars (\$2,000,000).
5. Employment Practices Liability Insurance with an each occurrence limit of Two Million Dollars (\$2,000,000).

Vendor will deliver to the State Bar offices at 180 Howard Street, San Francisco, CA 94105 Attn: Bill Brauer, Procurement Officer, true and correct copies of its insurance policies required above, and certificates of such insurance within seven (7) days of the execution of this agreement. Each such policy will name the State Bar as an additional insured and will state that Vendor's policy shall be primary and that any insurance carried by the State Bar shall be noncontributing with respect thereto. The Employment Practices Liability Insurance, in addition to naming the State Bar as an additional insured, will name the State Bar Board of Governors, officers, and employees as named insureds. Each such policy will provide for thirty (30) days prior written notice to the State Bar in the event of cancellation or reduction in coverage or amount. If Vendor fails to secure and maintain insurance policies complying with the provisions of this agreement, the State Bar may purchase the appropriate insurance policies and Vendor will pay upon demand the cost of it to the State Bar or the State Bar may terminate this agreement. In addition to the insurance required to be obtained and maintained by Vendor, if Vendor assigns any portion of the duties under this agreement in accordance with the terms, hereof, each subcontractor or assignee will purchase and maintain the same insurance coverage required hereunder.

Vendor will immediately notify the State Bar if Vendor's commercial general liability

insurance contains restrictive endorsements other than those restrictive endorsements normally included in the State of California. If Vendor's commercial general liability insurance contains such restrictive endorsements, Vendor shall have five (5) business days to remove said restrictions. If Vendor is unable to do so, the State Bar may terminate this agreement, and will be required to give Vendor no more than two (2) days' notice of such termination, anything in this agreement to the contrary notwithstanding.

I. Conflict of Interest

1. Vendor will immediately notify the State Bar, in writing, of any potential or actual conflicts that arise between or among State Bar and any other persons and/or entities for whom Vendor provides services.
2. The State Bar, as a public corporation, is subject to government mandated conflict of interest codes. (See the State Bar Act, Conflicts of Interest [Business & Professions Code sections 6035 et seq.]; the Political Reform Act [Government Code sections 81000 et seq.]) These provisions concern, among other things, accepting gifts or gratuities from current and potential contracting entities and contracting with entities owned or controlled by State Bar officers, employees, or volunteers. Vendor will familiarize itself with the State Bar's conflict of interest codes and avoid any and all situations that could result in the violation of said codes.
3. Violation of a provision of the State Bar's conflict of interest codes may result in the State Bar's refusal to further contract with Vendor, in addition to the State Bar's exercising any and all other remedies available to it under California or federal law.

J. Termination

1. **Authorization of Funds.** Any extension of this Agreement into a State Bar fiscal year subsequent to the year in which it is signed is contingent on the California State Legislature authorizing State Bar funding at not less than the current level. If the State Bar funding level is reduced, the State Bar will have no further obligation under this Agreement, and Vendor agrees to take back any affected equipment, products, software, or hardware furnished under this agreement, terminate any services supplied to the State Bar, and relieve the State Bar of any further obligation therefor.
2. **Default by Vendor.** This agreement may be terminated by the State Bar upon seven (7) days written notice to the Vendor in the event the Vendor is in default under any of its provisions. In the event this agreement is terminated due to the default by the Vendor, the Vendor will not be entitled to receive any compensation for services performed or for any reimbursable expenses incurred, and the State Bar will have the right to have the services completed by other parties and the Vendor will reimburse the State Bar for the actual costs to complete the services in excess of the balance of the fee and reimbursable expenses, if any, provided for in this

agreement. Any such act by the State Bar will not be deemed a waiver of any other right or remedy of the State Bar, including, without limitation, the State Bar's right to consequential damages caused directly or indirectly by the Vendor's default.

3. **Automatic Termination.** This agreement will automatically terminate on the occurrence of any of the following events: (a) bankruptcy or insolvency of either party; (b) sale of the business of either party; (c) failure to comply with federal, state or local laws, regulations or requirements, or (d) expiration of the agreement.
4. **At Will.** This agreement may be terminated by the State Bar, in its sole discretion, on fourteen (14) days written notice to Vendor. In the event of termination pursuant to this section, Vendor's sole compensation shall be for that portion of services performed or goods delivered to the date of termination, together with reimbursable expenses, if any then due. Vendor shall not be paid for any services, goods or reimbursable expenses associated with any work or service not specifically authorized by the State Bar.

K. Ownership of Documents

All work product and instruments of the specifications ("work product") and all rights thereto in the nature of copyright, trademark, patent and rights to ideas are hereby assigned to, and will become the property of the State Bar whether or not the work is completed. In the event of termination of this agreement, or abandonment or suspension of work performed hereunder, all work product and all such rights thereto existing as of the date of such termination, suspension or abandonment will be assigned to, and will become the property of the State Bar as of such date. The term "work product" shall include, without limitation, any and all versions of any and all drawings, plans, graphs, photographs, slides, studies, schedules, budgets, estimates, layouts, and legislative bills other work product and any services which have been or will be prepared or rendered by Vendor, or under Vendor's direction, pursuant to this agreement. Vendor will covenant, warrant and represent to the State Bar that Vendor has the right to assign the copyright and the work product. Vendor will refrain from disclosing any and all versions of plans to any third party without first obtaining the written consent of the State Bar. Vendor will not use or permit a third party to use any of the work product in connection with this project or any other project without the written consent of the State Bar. Vendor will agree to deliver to the State Bar within five (5) days of a written request, all or any portion of the work product set forth in the State Bar's request. Vendor will be permitted to retain copies for information and reference. Vendor will provide the State Bar with updated copies of all work product on a monthly basis either on a computer disk or other reproducible format as requested by the State Bar.

L. Confidentiality and Publicity

Vendor will retain all confidential information provided by the State Bar in the strictest confidence and will neither use it nor disclose it to anyone other than employees

requiring the information to perform services under this agreement without the prior written consent of the State Bar. The State Bar retains the right to enjoin any unauthorized disclosure in an appropriate court of law. Vendor will not issue any public announcements concerning the State Bar without the prior written consent of the State Bar.

M. Nondiscrimination

Vendor will not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), sex or sexual orientation. Vendor will comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and applicable regulations promulgated there under (California Administrative Code, Title 2, section 7285.0 et seq.). Vendor will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this agreement.

N. Assignment/Subcontracting

1. **Assignment.** Vendor will not assign or transfer its interest, in whole or in part, under this agreement, without the written consent of the State Bar, which consent may be granted or withheld in the sole and absolute discretion of the State Bar. The parties acknowledge that the State Bar's obligations under this agreement primarily concern the financial ability to carry through the terms of payment. Therefore, the State Bar may assign or transfer part or all of its interest in this agreement, provided that such assignment shall not become effective, and the State Bar will not be released from its obligations under this agreement, until such time as the State Bar or the State Bar's assignee makes payment to Vendor of all fees and payments then due and payable to Vendor.
2. **Subcontracting.** Vendor may subcontract with other qualified firms or individuals as required to complete all, or a portion of, the delivery of services, subject to the written approval of the State Bar; provided, however, that Vendor clearly describe the reason for using any subcontractors, the specific role each subcontractor will play in the project, and the relationship between Vendor and its subcontractor to be maintained during the term of this agreement. Any such proposed subcontract shall be subject to the written approval of the State Bar prior to award of such subcontract by Vendor. No subcontract will be approved unless Vendor provides a written guarantee that Vendor's firm will be contractually obligated to assume all project responsibilities and the insurance requirements set forth above. Vendor will be responsible for the performance, in accordance with this Agreement, of all subcontracted work and Vendor will be liable to State Bar as if such subcontracting had not occurred. Substitution or addition of subcontractors will be permitted only as authorized in writing by the State Bar.

O. General Provisions

1. **Force Majeure.** Neither party will be deemed in default of this agreement or any provision hereunder to the extent that any delay or failure in the performance of the obligations of such party results from any significant and material causes beyond its reasonable control and without fault or negligence by such party.
2. **Governing Law.** This agreement will be governed by the laws of the State of California without giving effect to its principles of conflict of laws.
3. **Attorneys' Fees.** In the event either party institutes any action or proceeding against the other party relating to this agreement, the unsuccessful party in such action or proceeding will reimburse the successful party for its disbursements incurred in connection therewith and for its reasonable attorneys' fees as fixed by the court. In addition to the foregoing award of attorneys' fees to the successful party, the successful party in any lawsuit shall be entitled to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this agreement into any judgment.
4. **Arbitration** Any question, claim or dispute arising out of or in connection with this agreement in excess of Five Thousand Dollars (\$5,000.00) shall be referred to binding arbitration, except with respect to disputes regarding breaches of confidentiality. Such arbitration shall take place before a single arbitrator in the City and County of San Francisco, and shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. The arbitrator shall apply legal principles in accordance with California law. By agreeing to this arbitration clause, neither party waives applicable defenses or immunities available to it under California law. Any arbitration demand made under this clause must be made no later than one year from the expiration or termination of this agreement. The cost of the arbitration shall be borne equally by the parties, each party to pay its own fees and costs. Disputes of Five Thousand Dollars (\$5,000) or less shall be handled in Small Claims Court in the City and County of San Francisco.
5. **License.** In those instances where required, the Vendor represents and warrants that the Vendor holds a license, permit or special license to perform the services pursuant to this agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license and shall keep and maintain all such licenses, permits or special licenses in good standing and in full force and effect at all times while the Vendor is performing the services pursuant to this agreement.